

UNITED STATES DISTRICT COURT OF EASTERN TENNESSEE
OF CHATTANOOGA, TENNESSEE

FILED

JUL 12 2021

Clerk, U. S. District Court
Eastern District of Tennessee
At Chattanooga

SAMANTHA RAJAPAKSE,
PLAINTIFF

v.

No. 121cv158
collier/steger

INTERNET ESCROW SERVICES
D/B/A ESCROW.COM
EBAY MOTORS
(child company of EBAY. COM, ETAL
DEFENDANT (S)

COMPLAINT BREACH OF FIDICUARY, VIOLATION OF CONSUMER
PROTECTION ACT

Plaintiff, Samantha Rajapakse, representing herself before the court files a complaint before this court against Internet Escrow Services, d/b/a Escrow.com (Escrowee), Ebay.com and Ebay Motors for breach of fidicuary and violation of the Tennessee Consumer Act of the acts committed by Defendants Ebay. Com, Ebay Motors and Internet Escrow Services also known a Escrow.com

COUNT OF VIOLATIONS

- I. Defendant, Ebay.com, Ebay Motors, made a false claim or representation Plaintiff was eligible for Vehicle Purchase Program to protect her from fraud and risk with full knowledge of the statement being false in which she relied on the statement resulting Ebay statement in influencing her in the purchase of the vehicle in which she suffered financial loss and hardship, emotional duress, loss of enjoyment of property as a result of violation of the Tennessee Consumer Protection Act and the Consumer Protection Act.
- II. Defendant Internet Escrow Services also known as Escrow.com made a false claim or representation Plaintiff was eligible from Fraud and Risk by using their company in to protecting her and her funds with full knowledge of the statement being false in which she relied on the statement resulting Escrow.com assuring her in their website and statements influencing her in the purchase of the vehicle in which she suffered financial loss and hardship, emotional duress, loss of enjoyment of property as a result of fraudulent of Concealment.
- III. Defendant Internet Escrow Services also doing business as Escrow.com made fraudulent statements to Plaintiff influencing her to use Escrow.com on the escrow transaction. violation of the Tennessee Consumer Protection Act and the Consumer Protection Act.

- IV. Defendant Internet Escrow Services also doing business as Escrow.com neglected to take any measurements to investigate Plaintiff's claim of internet scam by the seller resulting in her becoming a victim of online fraud through their company as stated on its website
- V. Defendants, Ebay.com, Ebay Motors, Internet Escrow Services doing business as Escrow under 18 U.S.C§ 1341 allowing the Seller, Evans Boarkye to devise or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed.

VI. Defendant, Ebay Motors, a child company of Ebay.com violated the Tennessee Consumer Protection Act as an online listing for failure to investigate and take reasonable effort to prevent Plaintiff, Samantha Rajapakse from being a victim of fraud due to scam when evidence provided supported the seller in the commission of an online scam scheme.

Jurisdiction and Venue

This court has original jurisdiction under *28 U.S. C§ 1332(a) (3) (1) (A)(B)* of all civile actions where the converersy exceeds the value of \$75,000.00. exclusive of interest and cost between citizens of different states; a corporation that is deemed to be a citizen, and the state or foreign state where the insurer has its principal place of business, whether the claims asserted matter of national or interstate interest.

Federal Laws

Tennessee Statues

Tennessee Code Ann. §§47-3-307 Notice of Breach of Fiduciary Duty (a) (1)
“Fiduciary” meaning agent, trustee, partner, corporation officer, or director or other representative owing a fiduciary duty with respect to an instrument.
“Instrument” is or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty of the following rules apply.

Tennessee Code Ann. §§47-18-103 [19] Tennessee Consumer Protection Act defining “commerce” or consumer transaction as the advertising, offering for sale, lease, rental, or distribution of any goods or services, or property, tangible or intangible, real, personal, or mixed and other articles, commodities or thing of value wherever situated.

Tennessee Code. Ann. §§47-18-102 Tennessee Consumer Protection Act defining enacted in pertinent in part to “protect consumers” from those who engage in unfair or deceptive act or practices in the conduct of any trade or commerce.

Plaintiff, Samantha Rajapakse is a residence of Chattanooga, Tennessee, Hamilton County and the buyer of an online transaction.

Defendant, Internet Escrow Service also known as Escrow.com (escrowee) is an online escrow business of operation in 180 Montgomery Street, San Francisco, California, 94008 and has no business license of operation in the State of Tennessee Business license Department nor does the state of Tennessee has no business information of records for this company to conduct any business in the State of Tennessee. Internet Escrow Services or Escrow.com is partnered with Ebay.Motors and Ebay to assist sellers and buyers in their transaction to ensure fraud and risk between the transaction. Escrow.com is an online Escrow service a third party between a seller and buyer. The buyer provides funds into an account to ensure the

transaction is complete. The website disclose it protects consumers from Fraud and Risk and providing its customers information related to scams including contacting law enforcement. The escrowee also state if the parties can not come to an agreement Escrow.com would mediate the transaction in an attempt to resolve the issue. Escrow.com does not provide details in the agreement how it will protect its consumers from fraud or risk and provide no information on any bonding company listed by California law on its website. Internet Escrow Services also known as Escrow.com bonding is with state of Delaware Insurance for its operations.

Defendant, Ebay Motors is a child company of Ebay.com is an online listing for sellers (business and private) to sell items. Its business of operation is location in Hamilton San Jose, California,

Escrow.com History of Conducting Business without a License in a State

Facts Related to Complaint

Plaintiff Rajapakse (Rajapakse) answered an ad from seller Evans Boayke (Seller) in Virginia for the sale of a 2005 Hyundai Santa Fe on an Ebay listing (Ebay). The seller stated in his Ebay listing the vehicle had no mechanical issues, but he was trying to sell the vehicle because he could not afford insurance on both his new vehicle

and the vehicle he was selling. Rajapakse contacted the seller to receiving more information related to the sell of the vehicle and was again assured no mechanical issues were related to the vehicle. The seller was seeking \$2500.00 for the vehicle but Rajapakse offered \$1900.00; the seller accepted Rajapakse's offer. Seller contacted Rajapakse and suggested she send the funds from bank-to-bank which Rajapakse refused and contacted Ebay for assistance. Ebay highly recommend Rajapakse to use Escrow. Com an affiliate partner of Ebay to protect herself from fraud or risk of the seller. Ebay as Agent ensured Rajapakse in the event of fraud on the part of the seller Escrow would protect her funds. Rajapakse also contacted Escrow.com who also assured her her funds were protected from fraud and risk as well. On April 7, 2021, Rajapakse submitted an ACH to be transferr from her bank (Wells Fargo) to of her tax refund to Escrow.com and payment was transferred to Escrow.com to secure the pending transaction between the seller and Rajapakse. On April 15,2021 Rajapakse paid by credit card for the vehicle to be shipped from Fairfax, Virginia to Tennessee via Taj U-Haul automotive brokers located in Atlanta, GA in the amount of \$699.82 (discounts were applied for first time users) and delivered to Rajapakse on 16th of April the vehicle was delivered to Rajapakse who immediately inspected the vehicle and notice a pinging sound in the engine. Upon receiving and reviewing the bill of sale the seller stated there was issue related to the axle control which was not disclosed prior to the pending transaction on the Ebay listing. On the same day of the 16th the vehicle was taken to the Inspection Station and passed auto inspection. After the inspector notice the pinging continued and Rajapakse was told

had the inspector heard the pinging she would have denied the inspection. The vehicle was immediately taken to Goodyear Service Center for a more detail inspection which confirmed the pinging noise was inside the motor, the axle was damaged including the arm control holding the tire in place. The condition was verified by Maxi Auto and East Ridge repair shop in Chattanooga, TN. Documentation from Goodyear was provided to both Escrow.com and Ebay Motors supporting the seller failure to disclose. Plaintiff also informed Ebay Motors and Escrow that the seller was not a private seller, but the title listed him as a Dealer from New Jersey [Auto Dealer ID: 05496U] information retrieved from the vehicle was a card from Paul's Auto Service Center, 743 Roosevelt Ave. Carteret, NJ 07008 who the mechanic stated in 2021 the seller was informed the motor was going out along with other issues that were not disclosed on the ebay listing provided to Escrow.com and Ebay Motors.

Rajapakse contacted the seller beginning on the 16th of April, 2021 informing him of the vehicle findings which he stated was aware of the damage but stated he purchased the vehicle in the condition and the offer to the seller was \$300.00 towards the vehicle or the shipment; seller agreed and Escrow.com was contacted on the same day of the 16th informing the agent of the mechanical damage and was instructed by the Escrow.com Agent to do the following: Reject the contact and state her reason of rejection for Escrow.com to mediate between the parties. Rajapakse also contacted Escrow.com General Manager Jackson Elsegood informing him of the

condition of the vehicle and stated she had been scammed and wanted to mediate because it would cost her \$899. To return the vehicle and the seller should take some responsibility for failure to disclose the true condition of the vehicle. (Elsegood) began immediately demanding Rajapakse return the vehicle to the seller at her own expense. Rajapakse stated to Elsegood offered to pay half for the return of the vehicle with the funds held in escrow. During the 10 inspection days allowed during the pending transaction emails between seller, Rajapakse, Escrow.com, and Ebay Motors continued in which seller fully disclosed he had full knowledge of the true condition of the vehicle and Rajapakse and Escrow.com General Manager should have known due to the age of the vehicle before she agreed to the purchase. The emails directly sent to Rajapakse from the seller showing he had reduced the price three times were also forwarded to executive officers, customer support, and management of Escrow.com. During the 10-day inspection Elsegood repeatedly harassed Rajapakse in returning the vehicle at her own expense leaving the seller unaccounted for his action. Rajapakse provided to Escrow.com contact information to autobroker, Taj U-haul for the return of the vehicle as well as set up the autobroker to help all parties schedule the return and fees. During the conversation of scheduling the return, the driver stated he heard a loud pinging noise as the seller was putting the vehicle on the truck to deliver to Tennessee. Further investigation revealed discovered the seller was an active dealer in New Jersey where the vehicle was purchased. Due to the seller failure to fully disclose the condition of the vehicle as well as his Dealer status Plaintiff invoked Tennessee Abandon Vehicle law citing fraud and breach of

contract sending seller a notice via mail and email to remove the vehicle from the property and informing Escrow.com as well. The notice was by mail returned as seller never resided at the place listed on his Ebay and Escrow account. Escrow informed Plaintiff in order for her to claim fraud it only covers the clear title itself and not any other claims that arised from the transaction resulting under Escrow.com policy this was not fraud. The vehicle has been sitting on the property where Plaintiff reside and has not moved since the delivery of the vehicle due to the status of the vehicle it ia a hazardous vehicle for roads or highways.

Communication with Ebay and Ebay Motors

Seller's listing was generated through Ebay Motors, a child company of Ebay.com which Rajapakse contacted Ebay and Ebay Motors informing the seller's listing was a scam for failing to disclose the true condition of the vehicle. Ebay informed Rajapakse she was eligible for the Vehicle Purchase Program and a claim was filed by Rajapakse through Ebay Motors. During the time of the pending claim, Rajapakse repreatedly contacted Ebay Motors informing them of the new evidence discovered during pending status of the investigation in which the reply by Ebay Motor staff ridiculing her and advising her to cease communication with the company. Ebay denied the claim stating the vehicle was over 10 years old. Outline of Ebay Vehicle Purchase Progam States:

Vehicle Purchase Protection

Important reminders:

- Vehicle Purchase Protection is **only offered on transactions that are completed on eBay.**
- eBay discourages the use of offline transactions, including payments made via Moneygram, Western Union or gift cards. These types of payments are often associated with fraudulent transactions.
- Vehicle Purchase Protection does not cover any damage on vehicles 10 years old or older (10-year threshold is based on model year).
- Vehicle Purchase Protection does not cover any damage on a vehicle listed with anything but a "clean" title.
- **For items purchased on or after September 1, 2016, your eligible vehicle purchase is protected for up to \$100,000 or the purchase price paid, whichever is lower. For items purchased prior to September 1, 2016, your eligible vehicle purchase is protected for up to \$50,000 or the vehicle purchase price, whichever is lower.**
- **See additional exclusions to the coverage of Vehicle Purchase Protection below.**

Overview

Vehicle Purchase Protection (VPP) provides protection, against certain losses associated with fraud, up to a maximum amount of your purchase price paid (not exceeding \$100,000) for purchase of an eligible vehicle on ebay.com or through the eBay mobile application. The types of fraud that are generally covered are:

- non-delivery of the vehicle,
- **undisclosed defects in the title, and certain undisclosed defects with the vehicle. VPP is automatically included at no additional cost when you complete the purchase of an eligible vehicle on ebay.com or eBay mobile applications.**
-

A police report was reported in FairFax, Virigina and in Chattanooga Tennessee with the East Ridge Police Department and provide to both Ebay and Escrow.com.

Ebay Motors has refused to flag the seller's account as a scammer.

Plaintiff has filed numerous complaints with the State of Tennessee Consumer Affairs office who has stated Internet Escrow Services also known as Escrow. Com has no record i.e., Insurance or bonding of authorization in operating a business in the state of Tennessee. Ebay Motors informed Plaintiff in order for her to claim fraud it only covers the title was not clear its and not any other claims that arised she had

to go and attempt to put the title in her name in order to claim fraud. Ebay further neglect to attempt to contact Escrow.com to

Tennessee Consumer Protection Act

The Tennessee Consumer Protection Act §§47-18-102 (TCPA) was enacted in pertinent part to “protect consumers” from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce. Escrow.com and Ebay defense has been they are not the seller of the product so they are not liable for any such fraud between the seller and buyer. This is not true since both Ebay and Escrow allowed the transaction to be conducted on their sites and assure those who use their site to conduct such transaction are under their policy.

Other Consumer Protection Act.

1700 et seq of the California Consumer Legal Remedies Act sect (3)(8)(16) while Plaintiff funds were held in Escrow by Escrow.com and the listing was stored and control by Ebay both having authority of a salesman to close the deal, misrepresented the affiliation of both parties by stating they could not contact either party of the breach of transaction when both stated on their website they are affiliated partners, and claiming false claims of the services provided to customer, Plaintiff as if her funds were fully protected by fraud or risk.

**State and Federal laws on Contractual Agreement between the parties
when Breached.**

Plaintiff signed the agreement between the parties electronically by accepting the terms of the contract §§47-10-105 which the contract binding and is supported by United States Contract Law states when a party to a contract fail to fulfill its obligation in the contract in whole or part, behaves in manner which shows intention not to perform their obligation under the contract in the future, and the contract became impossible to perform as a result of the defaulting party's act. Internet Escrow Services and Ebay.com has created a new form of fraud that has Placed Plaintiff in a one side contract where the seller are not held accountable for their action or any action is taking against the companies to prevent future criminal acts committed against a consumer.

**Federal and State Statue Fraud, Misrepresentation and Breach of
Fiduciary of a Contract**

Defendants Ebay and Internet Escrow Service fraud policy only addresses the title of the vehicle and not the incident surrounding the fact.

**Emails and other Relevant Communication in support of Plaintiff's
complaint**

Communication that will be entered into the record of this court under the general rule of evidence is offered to be the best which the nature of the case admits and will leave no presumption on its Prima Facie that there is behind, it is admissible,

Howard v. Commissioner of Sec., 276 F.3d 235 (6th Cir. 2002), *Upshaw v. Ford Motor Co.*, 576 F.3d 576, 593 (6th Cir. 2009).

Under Tennessee Law when a Defendant has affirmatively made an untrue statement of not material fact, a Plaintiff may well be able to recover for intentional misrepresentation (also called fraud) for negligent misrepresentation. Emails between Management of Escrow.com , Jackson Elsegood and the seller, Evans Boarkye showing his intentionally intent to scam and fraud a consumer into purchased the vehicle without fully disclosing and after it was provided to Escrow.com and Ebay Motors both companies failed to take any resonable effort to address the issue, but instead called it Buyer's Remose. Ebay.com, Ebay Motors and Internet Escrow Services also known Escrow.com have become misleading and one-side against consumers including Rajapakse which does not protection of internet frauds and claim.

Plaintiff's Damages caused by Defendants Ebay.com and Escrow.com in seeking relief.

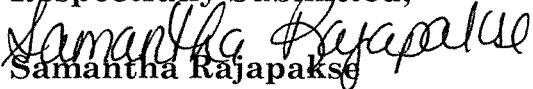
Online businesses are held to accountability as other companies in protecting consumers in online purchases. The increase of online sale increasing consumers are seeking ensurance they are not taking advantage by scam artist or fraud claims. Plaintiff has endured the loss of property and the loss of enjoyment of property since the transaction. The vehicle has been undrivable since the delivery and punitive damages is properly imposed to be a ligimate interest in punishing unlawful conduct and deter it repetition, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323,350 94 S.Ct. 2997,

41 L.Ed 2d 789. The vehicle has been non-drivable exceeding 120 days from the date of delivery. Plaintiff has had to seek substitute transportation to perform everyday activities including medial trips to and from her medical care. The total cost to repair the vehicle is \$3,500.00 to repair.

Relief Sought by Plaintiff:

1. Plaintiff be awarded the actual damage of the vehicle to \$3,500.00 repair cost from Defendants, Internet Escrow Services.
2. Plaintiff be awarded the actual damage cost of the shipping \$699.92 from Defendant Ebay.com.
3. The court award Plaintiff for punitive damages due to the loss of use against the Defendants Internet Escrow Services for negligence and fraud.
4. The court award Plaintiff for punitive damages due to the lost of use against Ebay.com and Ebay Motors for negligence and fraud.
5. The court award additional damages as the court see fit to make the Plaintiff whole.

Respectfully Submitted,


Samantha Rajapakse

7/9, 2021

Plaintiff Pro/se

3221 Westonia Drive

Chattanooga, TN 37412